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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,338	12/22/2001	Earl David Brock	16,905	2861
23556	7590	12/30/2003		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956				
			EXAMINER KIDWELL, MICHELE M	
			ART UNIT	PAPER NUMBER
			3761	11

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/028,338

Applicant(s)

BROCK ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9. 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klofta et al. (US 2003/0077307), and further in view of Koenig et al. (US 2003/0118475).

With respect to claim 1, Klofta et al. (hereinafter "Klofta") discloses a system for improving skin health of a wearer comprising a disposable absorbent article that includes an outer cover, liquid permeable bodyside liner that defines a bodyfacing surface and that is connected in superposed relation to the outer cover and an absorbent body that is located between the bodyside liner and the outer cover (page 8, paragraph 89) and a skin care composition on at least a portion of the bodyfacing surface of the bodyside liner that includes from about 40 to about 95 percent by weight of emollient (page 2, paragraph 26; page 3 paragraph 32) and from about 5 to about 60 percent by weight of viscosity enhancer (page 5, paragraph 56) used in conjunction with a wet wipe as set forth on page 8, paragraph 86.

The difference between Klofta and claim 1 is the provision that the wet wipe include a nonwoven substrate and a skin care solution that includes from about 90 to about 99 percent by weight of hydrophilic solvent, from 0 to about 30 percent by weight

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of surfactant and from about 0.1 to about 10 percent by weight of extracted botanical active.

Koenig et al. (hereinafter "Koenig") teaches a wet wipe that includes a nonwoven substrate (page 1, paragraph 9) and a skin care solution that includes from about 90 to about 99 percent by weight of hydrophilic solvent (page 2, paragraph 14) and from about 0.1 to about 10 percent by weight of extracted botanical active as set forth on page 2, paragraph 15.

It would have been obvious to one of ordinary skill in the art to modify the wipe of Klofta to employ the claimed skin care solution because the claimed skin care solution reduces the production of ammonia while providing additional skin care benefits as taught by Koenig on page 1, paragraphs 2 and 3.

Additionally, the examiner notes that Klofta discloses that the delivery vehicles of the application may be used in any combination on page 8, paragraph 86. Therefore, one of ordinary skill in the art would have had the motivation to include the skin care compositions on the wipe disclosed by Klofta. Likewise, the Klofta reference itself discloses the use of botanical actives as part of the skin care formulation.

With respect to claims 2 – 5, the examiner contends that Klofta in view of Koenig disclose the claimed invention. The preference of applying the wipe before or after use of the article and/or using the combination once or more than once a day is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art because the prior art is fully capable of performing the claimed limitations.

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With reference to claim 6, Klofta discloses an emollient selected from the listed group as set forth on page 3, paragraph 34.

As to claim 7, Klofta discloses the claimed viscosity enhancer on page 6, paragraph 61.

Regarding claims 8 – 9, Klofta discloses from about 5 to about 55% of beeswax as set forth on page 5, paragraph 56 and page 6, paragraph 61.

As to claims 10 and 11, Klofta discloses from about 0.1 – 55 percent of coconut oil as set forth on page 3, paragraph 32 and page 4, paragraph 42.

With reference to claims 12 – 13, Klofta discloses from about 0.1 to about 10 percent of cholesterol as set forth on page 3, paragraph 32 and page 4, paragraph 44.

With respect to claim 14, Klofta discloses a skin care solution with a HLB range of from about 7 to about 18 as set forth on page 7, paragraph 76.

As to claim 15, Klofta discloses a surfactant selected from the listed group as set forth on page 4, paragraph 37.

With reference to claim 16, Koenig teaches the extracted botanical active as yucca on page 1, paragraph 7.

As to claims 17 and 18, Klofta discloses from about 0.1 – 55 percent of coconut oil as set forth on page 3, paragraph 32 and page 4, paragraph 42.

With reference to claims 19 – 20, Klofta discloses from about 0.1 to about 10 percent of soy sterols as set forth on page 3, paragraph 32 and page 4, paragraph 44.

Regarding claims 21 – 22, Klofta discloses from about 0.1 to about 30 percent of glucose as set forth on page 3, paragraph 36.

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Claims 1 – 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klofta et al. (US 2003/0077307), and further in view of Pregozen (US 5,141,803).

With respect to claim 1, Klofta et al. (hereinafter "Klofta") discloses a system for improving skin health of a wearer comprising a disposable absorbent article that includes an outer cover, liquid permeable bodyside liner that defines a bodyfacing surface and that is connected in superposed relation to the outer cover and an absorbent body that is located between the bodyside liner and the outer cover (page 8, paragraph 89) and a skin care composition on at least a portion of the bodyfacing surface of the bodyside liner that includes from about 40 to about 95 percent by weight of emollient (page 2, paragraph 26; page 3 paragraph 32) and from about 5 to about 60 percent by weight of viscosity enhancer (page 5, paragraph 56) used in conjunction with a wet wipe as set forth on page 8, paragraph 86.

The difference between Klofta and claim 1 is the provision that the wet wipe include a nonwoven substrate and a skin care solution that includes from about 90 to about 99 percent by weight of hydrophilic solvent, from 0 to about 30 percent by weight of surfactant and from about 0.1 to about 10 percent by weight of extracted botanical active.

Pregozen teaches a wet wipe that includes a nonwoven substrate (col. 3, lines 18 – 22) and a skin care solution that includes from about 90 to about 99 percent by weight of hydrophilic solvent (col. 2, lines 7 – 8) and from about 0.1 to about 10 percent by weight of extracted botanical active as set forth in col. 4, lines 31 – 44.

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It would have been obvious to one of ordinary skill in the art to modify the wipe of Klofta to employ the skin care solution of Pregozen because the skin care solution of Pregozen delivers active skin care ingredients to cleanse the skin while reducing a slippery feel and protecting against contamination as taught by Pregozen in col. 2, lines 51 – 64 and col. 3, lines 18 – 22.

Additionally, the examiner notes that Klofta discloses that the delivery vehicles of the application may be used in any combination on page 8, paragraph 86. Therefore, one of ordinary skill in the art would have had the motivation to include the skin care compositions on the wipe disclosed by Klofta. Likewise, the Klofta reference itself discloses the use of botanical actives as part of the skin care formulation.

With respect to claims 2 – 5, the examiner contends that Klofta in view of Pregozen disclose the claimed invention. The preference of applying the wipe before or after use of the article and/or using the combination once or more than once a day is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art because the prior art is fully capable of performing the claimed limitations.

With reference to claim 6, Klofta discloses an emollient selected from the listed group as set forth on page 3, paragraph 34.

As to claim 7, Klofta discloses the claimed viscosity enhancer on page 6, paragraph 61.

Regarding claims 8 – 9, Klofta discloses from about 5 to about 55% of beeswax as set forth on page 5, paragraph 56 and page 6, paragraph 61.

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As to claims 10 and 11, Klofta discloses from about 0.1 – 55 percent of coconut oil as set forth on page 3, paragraph 32 and page 4, paragraph 42.

With reference to claims 12 – 13, Klofta discloses from about 0.1 to about 10 percent of cholesterol as set forth on page 3, paragraph 32 and page 4, paragraph 44.

With respect to claim 14, Klofta discloses a skin care solution with a HLB range of from about 7 to about 18 as set forth on page 7, paragraph 76.

As to claim 15, Klofta discloses a surfactant selected from the listed group as set forth on page 4, paragraph 37.

With reference to claim 16, Koenig teaches the extracted botanical active as yucca on page 1, paragraph 7.

As to claims 17 and 18, Klofta discloses from about 0.1 – 55 percent of coconut oil as set forth on page 3, paragraph 32 and page 4, paragraph 42.

With reference to claims 19 – 20, Klofta discloses from about 0.1 to about 10 percent of soy sterols as set forth on page 3, paragraph 32 and page 4, paragraph 44.

Regarding claims 21 – 22, Klofta discloses from about 0.1 to about 30 percent of glucose as set forth on page 3, paragraph 36.

Response to Arguments

Applicant's arguments filed October 13, 2003 have been fully considered but they are not persuasive.

With respect to the applicant's argument that Koenig is not available as prior art, the examiner disagrees.

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MPEP 706.02(I)(1) states:

Effective November 29, 1999, subject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) is now disqualified as prior art against the claimed invention if that subject matter and the claimed invention "were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." (emphasis added) This change to 35 U.S.C. 103(c) applies to all utility, design and plant patent applications filed on or after November 29, 1999, including continuing applications filed under 37 CFR 1.53(b), continued prosecution application filed under 37 CFR 1.53(d), and reissues. The amendment to 35 U.S.C. 103(c) does not affect any application filed before November 29, 1999, a request for examination under 37 CFR 1.129 of such an application, nor a request for continued examination under 37 CFR 1.114 of such an application. >The Intellectual Property and High Technology Technical Amendments Act of 2002 (Pub. L. 107-273, 116 Stat. 1758 (2002) did not further amend the exclusion under 35 U.S.C.103(c) as amended on November 29, 1999.

The applicant has provided a notice of recordation of assignment document showing that the Koenig reference is owned by the same person or subject to an obligation of assignment to the same person as of January 21, 2002. Since the instant application was filed on December 22, 2001, the examiner contends that the instant application and the Koenig reference were not owned by the same person or subject to an obligation of assignment to the same person at the time the invention was made, thereby qualifying the Koenig reference as prior art against the claimed invention in view of MPEP 706.02(I)(1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday,

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7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Michele Kidwell
December 29, 2003